

REMARKS/ARGUMENTS

The Office action dated June 24, 2009 has been received and carefully considered. By this amendment, claims 1, 10, and 18 have been amended. After entry of this amendment, claims 1-20 will be pending. In view of the amendments and the following remarks, Applicants respectfully request reconsideration.

Claim Objection

The Office objected to **claim 1** for use of the term "optionally" as the use of the objected term would allow non-use of the coffee cherry. The applicant amended the claim to more clearly state that the whole coffee cherry in option (1) must be part of the food product, and that the whole coffee cherry may be intact (*e.g.*, chocolate covered) or in comminuted form (*e.g.*, as part of a granola bar). The objection should therefore be overcome.

General Remarks

In the present office action, the examiner pointed to Boniello et al., and more specifically to column 2, lines 57-62 in the '992 patent, to establish that the reference teaches among other elements use of ground green coffee beans, and coffee by products (pulp, husk, and mucilage) in the preparation of a nutrient medium. With respect to the above portions of the coffee cherry, the applicant agrees.

However, the applicant disagrees with the apparent official notice (page 3, last sentence in paragraph 1. or item 5.) that recitation of such elements would constitute teaching of use of a coffee cherry as presently claimed. A fair reading of the '992 patent reveals that the invention described by Boniello is drawn to use of soluble or extractable coffee solids as a nutrient source for microorganisms in a fermentation process to produce diacetyl and acetoin.

To even more clearly delineate Boniello over the claims, the applicant amended **claim 1** to expressly require a step of *providing a whole coffee cherry or a comminuted whole coffee cherry*, and to further expressly require that the step of extracting uses an *extraction process other than fermentation* to produce a *non-fermented coffee cherry extract*. Support for these amendments can be found, inter alia, on page 4, line 9 to page 5 line 2; page 15, line 17-27; page

9, line 20 to page 10, line 10 [provision of cherry or comminuted cherry]; and page 2 line 27 to page 3, line 4; page 10, line 12 to page 11, line 26 [non-fermentation].

Similarly, **claim 10** was amended to expressly require that the extraction process is an *extraction process other than fermentation* to produce a *non-fermented extract*. Likewise, amended **claim 18** now expressly requires that the food product includes a *non-fermented extract*. Support for these amendments can be found, inter alia, on page 2 line 27 to page 3, line 4; page 10, line 12 to page 11, line 26.

35 USC §103

The Office rejected **claims 1, 4, and 6-8** as being obvious over Boniello et al. (U.S. Pat. No. 4,867,992) in view of Drunen et al. (U.S. Pat. No. 6,572,915). The applicant respectfully disagrees for various reasons.

As amended herein, claim 1 expressly requires a step of providing a whole coffee cherry or a comminuted whole coffee cherry, and to further expressly requires that the step of extracting uses an extraction process other than fermentation to produce a non-fermented coffee cherry extract. These elements are neither taught, nor suggested in the cited references.

It is noted that while the '992 patent suggests use of one or more components of a coffee cherry, the '992 patent lacks any reference to the step of providing a whole coffee cherry or a comminuted whole coffee cherry. Boniello merely makes a point that any soluble coffee solid can be used in the preparation of a fermentation medium, but fails to teach use of a whole coffee cherry or a comminuted coffee cherry. Likewise, Drunen fails to teach a whole coffee cherry. As is readily apparent, Drunen uses by-products from the coffee production rather than coffee cherries. Moreover, it is noted that the '992 patent specifically requires a fermentation and therefore expressly teaches against the presently claimed subject matter. Drunen fails to remedy these defects, and the references therefore fail to teach or suggest all of the claimed elements. Therefore, the rejection of claim 1 (and claims 4 and 6-9 by virtue of their dependence on amended claim 1) should no longer be maintained.

Similarly, amended claim 10 (and claims 11-14 by virtue of their dependence on amended claim 10) requires a step of contacting the comminuted whole coffee cherry with a solvent in an extraction process other than fermentation to produce a non-fermented extract, which is clearly contrary to the teaching of Boniello et al. Drunen again fails to remedy this defect. Consequently, the rejection of claims 10-14 should no longer be maintained.

The Office rejected **claims 5 and 17** as being obvious over Boniello et al. (U.S. Pat. No. 4,867,992) in view of Drunen et al. (U.S. Pat. No. 6,572,915) as applied above and further view of Fabian (WO 97/42831), Duvic et al. (U.S. Pat. No. 5,792,931) and Blanc et al. (J. Agric Food Chem. 1998). The applicant respectfully disagrees for various reasons.

As claim 5 is dependent on amended claim 1, the same defects and arguments as noted above apply and are not reiterated here. Similarly, claim 17 is dependent on amended claim 10, and the same defects and arguments as noted above apply and are not reiterated here. Fabian, Duvic et al., and Blanc et al. fail to remedy these defects. Moreover, it is noted that Fabian, Duvic et al., and Blanc et al. merely discuss various mycotoxin levels in coffee beans, but not the whole coffee cherry. Still further, as Drunen was already combined with Boniello based on the argument that Drunen would remove the mycotoxins (see office action, page 4, paragraph 4.), the proposed motivation for combination of Boniello and Drunen with Fabian, Duvic et al., and Blanc et al. is moot. Consequently, in light of the amendments and arguments, the rejection of claims 5 and 17 should be withdrawn.

The Office rejected **claims 2, 3, 15, and 16** as being obvious over Boniello et al. (U.S. Pat. No. 4,867,992) in view of Drunen et al. (U.S. Pat. No. 6,572,915) as applied above and further view of Sievetz. (Coffee Technology 1979). The applicant respectfully disagrees for various reasons.

As claims 2-3 are dependent on amended claim 1, and as claims 15-16 are dependent on amended claim 10, and the same defects and arguments as noted above apply and are not reiterated here. Sievetz fails to remedy these defects. Moreover, it should be noted that Sievetz is concerned with coffee cherry harvest only in the context of green coffee (unroasted coffee beans) production. Sievetz is entirely silent on any other use for the harvested fruit, let alone on use of the fruit where the whole cherry or an extract thereof is combined with a food product for

human consumption. Yes, Sievetz provides teaching that unripe fruit can be harvested, however, such teaching is only relevant with respect to the process of green coffee production. Therefore, in light of the amendments and arguments provided above, the rejection of claims 2, 3, 15, and 16 should be withdrawn.

The Office rejected **claims 18-20** as being obvious over Boniello et al. (U.S. Pat. No. 4,867,992) in view of Drunen et al. (U.S. Pat. No. 6,572,915) as applied above and further view of The Free Dictionary by Farlex. The applicant once more respectfully disagrees for various reasons.

As already pointed out above, claim 18 (and claims 19-20 by virtue of their dependence on amended claim 18) expressly requires inclusion of a whole coffee cherry in the food product or inclusion of a non-fermented extract in the food product. Such elements are either not present in Boniello, or contrary to the teaching of the '992 patent. The Free Dictionary fails to remedy these defects. Consequently, in light of the amendments and arguments provided above, the rejection of claims 18-20 should be withdrawn.

Request For Allowance

Claims 1-20 are pending in this application. The applicant requests allowance of all pending claims.

Respectfully submitted,
Fish & Associates, PC

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By: /Martin Fessenmaier/
Martin Fessenmaier
Reg. No. 46697

Fish & Associates, PC
2603 Main Street, Suite 1000
Irvine, CA 92614-6232
Telephone (949) 943-8300
Fax (949) 943-8358